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**In the Supreme Court of the
United States**

OCTOBER TERM, 1964

No. [REDACTED] **111**

DEPARTMENT OF MENTAL HYGIENE OF THE
STATE OF CALIFORNIA,

Petitioner,

vs.

EVELYN KIRCHNER, Administratrix of the
Estate of ELLINOR GREEN VANCE,

Respondent.

Reply to Opposing Brief of Respondent

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TABLE OF AUTHORITIES CITED

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Without discussion and without supporting factual data, Respondent contends that the issue here is "moot." The contention is absurd. The final decision in this case will have a real and measurable effect on the parties litigant. The precise question to be answered is whether the daughter (through her estate) is liable for charges incurred on behalf of her mother, a mental patient in a state institution. A decision reversing the California Supreme Court will have the immediate effect of compelling the estate to satisfy the Department of Mental Hygiene's claim in the amount of \$7,554.22. Hence, any allegation of mootness is ill-founded.

Respondent next maintains that the question posed by

petitioner is hypothetical. Had the Supreme Court of California limited itself to the contentions briefed and argued by the parties prior to its decision, perhaps the present wording of the question could indeed be termed hypothetical. But the California court did not so restrict itself. It bypassed the narrow question asked by respondent, viz., whether the Department must first exhaust the patient's estate before seeking payment from relatives, in favor of ruling on the constitutionality of the entire statute.

Hence any reference to questions as they were phrased prior to the California Supreme Court's decision is misplaced. Those issues have been superseded by a holding which purports to decide the general constitutional question of whether a classification based on close family relationship is reasonable within the meaning of the equal protection clause of the Fourteenth Amendment.

Petitioner's second argument set forth at pages 6 and 7 of his Brief, is that "the liability imposed by this section [§ 6650] being absolute is in no way correlated with the need of the patient or of the ability of the relative to pay." Petitioner urges that section 6650 of the California Welfare & Institutions Code cannot be read *in vacuo*. It must be taken together with the succeeding sections of the Welfare and Institutions Code. As the court stated in *Guardianship of Thrasher*, 105 Cal. App. 2d 768, 777 (1951), "All of these sections must be considered together." (See also *Estate of Phipps*, 112 Cal. App. 2d 732, 735 (1952); *Estate of Risse*, 156 Cal. App. 2d 412 (1957).) This being so, petitioner makes reference to section 6653 of the California Welfare & Institutions Code wherein it is stated that an investigation is to be made by the department and that the department "shall ascertain the financial condition of such relative or relatives to determine whether in each case such

relative or relatives are in fact financially able to pay such charges." (See also § 6651 discussed at page 6, fn. 9 of the Petition for Certiorari.)

Respondent also states (page 7 of Respondent's Brief): "Nor is there any provision whereunder a contributing relative can recoup from a patient after the patient's release." It is true that no such provision is contained in the Welfare and Institutions Code. However, the problem is dealt with in section 1432 of the Civil Code of California which states as follows:

"A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him."

Respondent's third argument is unclear. Apparently respondent contends that section 6650¹ has not obliterated interspousal liability and hence the section retains its constitutionality. Whatever the thrust of this argument, a simple juxtaposition of the California Supreme Court's decision with section 6650 shows that, contrary to respondent's assertion (opposing Brief, page 7) the Supreme Court of California has unequivocally declared the basic obligation imposed by section 6650 unconstitutional.

Petitioner urges that the importance of the instant decision is manifest. No refuge can be taken in claims that it concerns only narrow questions concerning priorities. Nor can the broad implications flowing directly from the decision be obscured by contentions that the questions

1. Respondent has charged that petitioner failed to reprint the entire text of section 6650 in its Petition for Certiorari. The charge is untrue: section 6650 and the succeeding sections which are pertinent to the issues here involved are all reprinted in full in Appendix D to the Petition, as pointed out in footnote 2 on page 3 of the Petition itself.

presented are merely hypothetical or moot. The urgency and seriousness of the instant holding are too obvious to belabor.²

Dated, San Francisco, California
June 24, 1964.

Respectfully submitted,

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(Appendix follows)

2. Illustrative of the concern which this decision has caused is the article appended hereto from the June 1964 issue of the Harvard Law Review. Petitioner points out that the appended article could not have been submitted earlier as the publication date followed the filing of the Petition for a Writ of Certiorari.

APPENDIX A

from: Harvard Law Review, v. 77, no. 8, June 1964

Constitutional Law—EQUAL PROTECTION—STATUTE COMPELLING RELATIVES TO SUPPORT PATIENTS CIVILLY COMMITTED TO STATE MENTAL HOSPITALS DECLARED UNCONSTITUTIONAL.—*Department of Mental Hygiene v. Kirchner* (Cal. 1964).

In January 1953, Mrs. Auguste Schaeche was adjudged mentally ill by a court of competent jurisdiction and committed to a California state hospital. Following the death of her daughter in August 1960, the Department of Mental Hygiene, pursuant to section 6650 of the Welfare and Institutions Code, filed a claim with the administratrix of the daughter's estate for the cost of her mother's care during the preceding four years. The claim was rejected by the administratrix—also guardian of Mrs. Schaeche's estate—who offered instead to pay the amount from the incompetent's assets of \$10,903.35. Since these assets were already subject to the Department's equitable lien of \$6,425 and the Department did not wish to reduce them further,¹ it rejected the offer and brought suit to recover the amount claimed from the daughter's estate. The lower court rendered judgment on the pleadings for the plaintiff. On appeal, *held*, reversed. Section 6650 denies the defendant equal protection since it compels an arbitrary class—the relatives of a mentally ill person—to support a public function. *Department of Mental Hygiene v. Kirchner*, 36 Cal. Rep. 488 (Sup. Ct. 1964).

The court's decision appears to turn on its view of civil confinement of the mentally ill as designed primarily for the protection of society and the possible rehabilitation of the

1. Cal. Welfare & Inst'n's Code § 6655 provides that payment shall not be made from the incompetent's estate if there is a likelihood that he will be released and the reduction in his estate would then make him a burden upon the community.

individual. Citing *Department of Mental Hygiene v. Hawley*,² where it was held that under section 6650 the state could not constitutionally compel a father to reimburse the state for care afforded an adult child unable to stand trial because of his mental disability, the court stated that the purposes of civil commitment are essentially equivalent to those of a commitment incidental to a penal proceeding; consequently, the cost of such commitment should properly be borne by the state. Since the court did not distinguish between persons committed because they are dangerous to the public and those committed because they are in need of care unavailable in the home or because their relatives preferred to place them under treatment, its opinion implies that the legislature could not characterize any aspect of the mental health program as being primarily concerned with the individual and his family. Accepting the court's premise that the mental health program is a public function, it follows that imposition of liability on the relatives of persons so confined is unjustified. However, since the legislature may have selected this particular class not only in the belief that the relatives derived a certain advantage from the state's treatment of the incompetent but also to preserve the traditional principles of family responsibility, the court's restricted characterization of the legislative purpose seems an abuse of its review powers, which are ordinarily confined to deciding whether the legislature has reasonably exercised its policy making discretion.³ Though the court may disagree with the conception of society upon which this legislation is based, it is normally not open to a

2. 59 Cal. 2d 247, 29 Cal. Rep. 718, 379 P.2d 22 (1963).

3. See *County of Los Angeles v. La Fuente*, 20 Cal. 2d 870, 129 P.2d 378 (1942), *cert. denied*, 317 U.S. 698 (1943); *Patrick v. Riley*, 209 Cal. 350, 287 Pac. 455 (1930).

court to impose its own social philosophy as a matter of constitutional law.⁴ Furthermore, history lends strong support to the contention that it is reasonable to place liability on relatives. While nonstatutory liability has been limited to husbands and to parents of minor children, most states have imposed statutory liability upon relatives of varying degrees of consanguinity.⁵

The opinion indicates that the incompetent's personal liability remains unaffected.⁶ Since the individual is directly benefited by treatment of his illness, regardless of the reason for his confinement, it seems reasonable for the legislature to require him to defray the cost to the extent of his ability. The court did not explicitly pass on the validity of imposing liability on a husband or parent for the treatment of a wife or minor child.⁷ It may be argued that the state merely furnishes care of a kind which under common law the parent or husband would have a duty to provide in the absence of the statute. But the assumption that support of the mentally ill is a public responsibility, if carried to its logical conclusion, might lead to the abrogation of even these responsibilities, since the benefit conferred on these relatives may often be little more than that conferred on the relatives designated by the present statute while the public benefit derived from the program remains constant.

4. It has been held that a legislative classification is a denial of equal protection only if the classification bears no substantial relation to the object to be accomplished. *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410 (1948).

5. *E.g.*, Ill. Ann. Stat. ch. 91½, § 9-19 (Smith-Hurd Supp. 1963). Such statutes have uniformly been held constitutional. See, *e.g.*, *Kough v. Hoehler*, 413 Ill. 409, 109 N.E.2d 177 (1952).

6. See 36 Cal. Rep. at 490.

7. The court limited its holding to the liability of "one adult for the cost of supporting another adult." 36 Cal. Rep. at 489 (Emphasis added.)

The court's rationale renders suspect not only similar laws in other states⁸ but all liability imposed in connection with welfare programs which may be classified by the courts as fulfilling a "public function." Commitment to a state sanatorium for treatment of a communicable disease, for example, seems to meet the court's test of being for the "protection of society" and the "reclamation" of the individual.⁹ Consequently, in view of the overriding public interest in preventing the spread of such diseases, relatives probably would not be liable for treatment received in a state or county hospital. Under the *Kirchner* rationale, retention by the state of a general power to compel relatives to support the indigent also seems questionable. Though aid to the indigent is not primarily intended to protect the public against harm, it is recognized today that society has a duty to provide for such persons.¹⁰ Imposition of liability upon relatives has been justified as preventing indigent persons from becoming public wards;¹¹ but if support of the indigent is defined as a public duty, then the burden may not be shifted to the relatives. Thus, unless qualified, the court's reasoning implies that the state may not impose liability upon relatives of persons aided by any state program simply because of the existence of such a relation-

8. Forty-two states presently have similar statutes. See Respondent's Petition for Rehearing, app. C.

9. 36 Cal. Rep. at 490. See, e.g., CONN. GEN. STAT. REV. §§ 17-294, -295 (1958), rendering relatives liable for care furnished patients at state tuberculosis facilities.

10. Such aid is normally required to be furnished by the county or city in which the indigent resides. See, e.g., CAL. WELFARE & INST'NS CODE § 2500.

11. See, e.g., *Broderick v. Broderick*, 7 Conn. Supp. 60 (Super. Ct. 1939).

ship,¹² with the result that all such programs would have to be financed entirely from general sources of taxation.

Since the court apparently recognized that the legislature may reasonably impose liability on the person confined, on the ground that he is a direct beneficiary of the treatment, its holding that imposition of liability on relatives is arbitrary may reflect a feeling that the benefit to the relatives is insufficiently manifest to justify their selection. If such a "benefit" test is accepted as determinative of what constitutes a reasonable class, the court's conclusion may be correct, even though the legislature limited the classification to "the husband, wife, father, mother, or children of a mentally ill person . . ."¹³ Yet the code provisions envisage commitments which in fact may be principally for the benefit of the individual and his family,¹⁴ and if the test is one of the degree by which public benefit exceeds private benefit, it might be possible to justify imposing liability on relatives in all but a restricted number of cases. Since the code provides no means for distinguishing between commitment of the dangerously ill, where the degree of public benefit clearly outweighs the private benefit from the commitment solely for treatment, where the public benefit is likely to be minimal, the court necessarily spoke in terms of the entire program. However, if the court's decision was based on comparative benefits, rather than total lack of benefit to the relatives, it would now be open to the legislature to redraft the statute in order to differentiate between the different types of commitment, specifying the persons deemed to benefit from each.

12. Affected programs in California would apparently include those providing aid to the aged and the needy blind. See CAL. WELFARE & INST'NS CODE §§ 2224, 3088.

13. *Cal. Welfare & Inst'ns Code* § 6650.

14. See *Cal. Welfare & Inst'ns Code* §§ 5040, 5050.8, 5076, 5100, 5102, 6602.